

TEACHERS' RETIREMENT BOARD

INVESTMENT COMMITTEE

OPEN SESSION

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SUBJECT: Quarterly Litigation Report      ITEM NUMBER: 14

ATTACHMENT(S): yes

ACTION: \_\_\_\_\_

DATE OF MEETING: July 7, 1999

INFORMATION: X

PRESENTER: Mr. Waddell

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The Quarterly Litigation Report has been prepared as directed by the Investment Committee. Non-Investment litigation will be reported in the Retirement Board meeting.

**STRS QUARTERLY LITIGATION REPORT**  
**July 1999**

**PROPERTY ADVISOR: CB Richard Ellis**  
**Wilshire Landmark I**

**Wang v. STRS (1994)** STRS Counsel: Haight, Brown, & Bonesteel. Legal counsel retained by insurance company. Alleged elevator injury at property. Attorneys of insurance company have responded to complaint and proceeding with preparation for trial.

**Northrop Gruman Plaza**

**Sanders v. STRS, et al. (1994)** STRS Counsel: Haight, Brown and Bonesteel. Alleged injury as a result of elevator malfunction. Insurance Company has retained counsel on behalf of STRS. Response to complaint has been filed. Plaintiff's deposition taken March 2, 1995. Millar Elevator (cross-defendant) has filed a governmental claim against STRS with the Board of Control. Upon rejection Millar Elevator will file a cross-complaint against STRS. Court has ordered mediation set before April 1996. Millar Elevator has accepted STRS tender of defense and agreed to indemnify STRS. Trial presently set in Santa Monica Superior Court.

**Chudnousky v. STRS (1995)** STRS Counsel: Wilner, Klein & Siegal. Insurance carrier retained counsel on behalf of STRS. Plaintiff alleges she fell over a brick in plaza and broke her hip. Claim being processed through insurance carrier. Lawsuit was filed and served on STRS in January 1997. Court has requested parties enter into mediation, which is scheduled for October 8, 1997. Plaintiff has offered to settle case for \$75,000. The mediation hearing resulted in a \$20,000 settlement offer to plaintiff to settle case.

**STRS v. Northrop Gruman (1998)** STRS Counsel: None assigned at this date: Claim made by advisor to tenant for common billing for electricity. Tenant and advisor are working on resolution of issue without litigation and claim by Landlord may be offset by outstanding credits accumulated by tenant.

**STRS v. Mercantile National Bank (1998)** STRS Counsel: Cox, Castle & Nicholson. Claim made by landlord to tenant for deferred billing of electricity which tenant has disputed.

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Advisor and tenant attempting to resolve issue without litigation.

**Rancho Pacifica**

**STRS v. Nittok Tile (1997)** STRS Counsel: Cox, Castle & Nicholson. Tenant has abandoned space and filed bankruptcy. STRS has filed a claim with the bankruptcy trustee through its counsel. Advisor will monitor bankruptcy claim. **STRS has received \$7,100.00 under bankruptcy claim to date.**

**STRS v. Specialized Testing (1998)** STRS Counsel: Cox, Castle & Nicholson. Tenant was under an agreement as a result of a prior default, which included a stipulated judgment. Tenant has again defaulted and the stipulated judgment enforced removing tenant from possession of the premises. Landlord has obtained possession of the premises. Review of assets of tenant being conducted to determine if collection action warranted. Action has been initiated to collect from the guarantors under the lease.

**STRS v. Waldron & Co. (1997)** STRS Counsel: Cox, Castle & Nicholson. Tenant was sued by the Securities and Exchange Commission in September 1998 and ceased to occupying the property. STRS has retained possession of the property and applied the security deposit to arrearage. Advisor will assess availability of tenant's assets to determine if STRS should pursue judgement.

**STRS v. Virtual Stock (1999)** STRS Counsel: Cox, Castle & Nicholson. Tenant has breached lease via non-payment and vacated property. Lease expires March 1999. Advisor will assess assets of tenant to determine if STRS should pursue litigation.

**9720 Wilshire**

**STRS v. Inman, Weisz & Stein. (1998)** STRS Counsel: Cox, Castle & Nicholson. Tenant has vacated space and is presently in default on rent due and owing under their lease. Advisor will seek judgment and pursue collection against tenant.

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**PROPERTY ADVISOR: Lend Lease**  
**Anaheim Plaza Shopping Center**

**In Re Clothestime (1995)** STRS Counsel: Cox, Castle & Nicholson. Tenant filed bankruptcy on December 9, 1995 but continues to make payment to STRS and occupy space.

**STRS v. El Pollo Loco (1999)** STRS Counsel: Cox, Castle & Nicholson. Negotiation to enter into lease with tenant terminated when they refused in bad faith to sign corporate lease. Attempts will be made to seek reimbursement of costs and legal fees prior to litigation.

**STRS v. Baskin Robbins (1997)** STRS Counsel: Cox, Castle & Nicholson. Tenant has defaulted under lease via non-payment of rent. Unlawful Detainer action was commenced against tenant to regain possession and seek monetary judgment against tenant.

**\* Ruiz v. STRS (1999)** STRS Counsel: Cuff, Robinson and Jones. Personal injury action filed by plaintiff alleging abduction from parking lot, assault and rape. Matter has been sent to insurance carrier who has retained counsel on behalf of STRS to defend action.

**STRS v. Kenny Rogers Roasters (1997)** STRS Counsel: Cox, Castle & Nicholson. Tenant is in default of Lease for non-payment of CAM charges and rent. Legal action has been initiated to regain possession of the premises and will seek monetary judgment against franchisee and guarantor Roasters Corporation. Tenant has filed for Bankruptcy protection and a proof of claim has been filed on behalf of STRS in the bankruptcy case.

**Pacific Financial Plaza**

**STRS v. Cal Fed (1999)** STRS Counsel: Voss, Cook & Theil. Litigation involves a master lease with tenant Cal-Fed who has claimed that lease was terminated due to actions of landlord. Space had been sub-leased by Cal-Fed to two (2) sub-tenants without the permission of the landlord as required by the terms of the lease. Sub-tenants continue to pay rent into an escrow account while litigation is ongoing. STRS will seek declaratory relief judgement against Cal-Fed for determination of validity of lease and monetary judgement for damages suffered by STRS.

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Depositions of STRS real estate advisors have been set for late June with discovery continuing. Cal-Fed has cross-complained against sub-tenants and STRS which have been responded to by STRS counsel.

**Davies Pacific Center**

**STRS v. Legacy Mortgage (1997)** STRS Counsel: Bendet, Fidell, Sakai & Lee. Tenant breached lease through non-payment of rent. Complaint for possession and monetary judgment has been filed. Stipulated judgment for Writ of Possession and monetary judgment (\$76,987.00) has been signed by tenant. Tenant vacated building and made \$3,000 payment on judgment. Advisor will continue to execute judgment against tenant's assets. **Tenant has filed Bankruptcy to dismiss judgements, no assets of debtor, advisor recommends write-off. Case closed.**

**Joe Pacific Shoe Repairs v. STRS, et al. (1997)** STRS Counsel: to be determined - appointed by insurance company. Plaintiff alleges breach of lease commitment by property manager of STRS. STRS will be indemnified for all costs and judgments by insurance carrier of leasing agent. Case has been scheduled for trial and depositions and discovery continuing in preparation for trial. **Case is being monitored by STRS counsel: Bendet, Fidell et al. with fees paid by the insurance carrier.**

**1120 19<sup>th</sup> Street**

**In Re Thomas Enterprises. Inc. (1992)** STRS Counsel: Hazel & Thomas, P.C. Tenant bankruptcy. Relief sought: \$70,000. Chapter 11, issue over 4 parking spaces which tenant gave up with lease for Suite 700. Creditors objected to disclosure statement. Once disclosure statement revised and approved, plan will be circulated for creditors approval.

**University Office Park**

**Washington v. STRS (1999)** STRS Counsel: Law Office of Daniel Hirshik. Plaintiff claims a slip and fall injury in the parking lot. Matter has been sent to law firm retained by the insurance carrier (Royal Insurance) for representation in defense of STRS. **Cross-complaints have been filed against management company and security company on behalf of STRS.**

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**Southrail Business Park**

**STRS v. Song Dba Woo-Ri (1997)** STRS Counsel: Procopio, Cory, Hargraves & Sabitch. Tenant has defaulted under Lease via nonpayment of rent. Tenant has vacated space and filed for Bankruptcy. Collection of arrearage unlikely but advisor will file claim on behalf of STRS in Bankruptcy proceeding.

**STRS v. Dundee (1998)** STRS Counsel: Procopio, Cory, Hargraves & Sabitch. Tenant has defaulted under lease. Judgment obtained for money and possession. Possession of space has been regained by STRS. Advisor will attempt to collect money judgment from tenant.

**Center Pointe of Woodridge**

**County of Du Page v. STRS (1999)** STRS Counsel: Schenk, Annes, Brookman & Tepper. County of Du Page has filed a condemnation action for 350 sq. feet of frontage on a portion of shopping center for expansion of street. Parties have agreed on the compensation for the space and the matter will be settled through stipulation. **Documents have been executed by all parties resolving matter. Case closed.**

**Pacific North West Group B-B-1**

**Market Center Management (MCM) v. PN WG B/B-1 et al. (1999)** STRS Counsel: Pillsbury, Madison & Sutro. MCM is seeking specific performance of a sale of the property known as the Marts under an unsigned purchase and sale agreement. Responses have been filed on behalf of PERS and STRS as joint defendants and discovery is ongoing. Defense Counsel is reviewing voluminous records on the property to respond to discovery requests. A joint venture meeting between the joint venturers (PERS, STRS and Tramell Crowe) took place in late March to discuss the litigation. **A Settlement Proposal has been reached and approved by the respective Investment Committees of the joint venturers and is presently being circulated for signature.**

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**Riverbend**

**Elbe v. STRS (1994)** STRS Counsel: Delaney, Zemetis, Donahue & Durham (appointed by insurance company) Alleged slip and fall by an employee of tenant. The complaint was served in July, 1996. STRS Counsel has filed answer and cross-complaint against a cleaning company. Discovery is proceeding with deposition of plaintiff completed. Counsel has reviewed deposition as favorable to STRS, matter proceeding to trial. **Trial date set for November 1999, STRS Counsel anticipates filing Summary Judgement motion to resolve case.**

**Santa Clara Industrial**

**Lopez v. STRS, et al. (1993)** STRS Counsel: Jones, LaMore, Brazier and Riddle (retained and paid by insurance company). Personal injury action for alleged slip and fall due to leak on roof. Matter being handled by insurance carrier.

**Quarry Shopping Center**

**STRS v. Partyland (1997)** STRS Counsel: Schenk, Annes, Brookmen & Tepper. Tenant has requested early termination of lease which landlord has denied (lease language does not allow an early termination). Attorneys are negotiating settlement to avoid litigation.

**Non-Real Estate Investment Related Litigation**

**Integra Realty Resources, etc. and et al. v. Fidelity Capital Appreciation Fund, et al.**

U.S. Bankruptcy Court of Colorado

Plaintiffs' Counsel:

STRS Counsel: Irene Tamura, Deputy Attorney General

This is a class action, of which STRS is a likely member, filed against several hundred shareholders of Integra, a company now in Bankruptcy. STRS owned shares of Integra through its Extended Market Fund. Through a series of complex mergers, buyouts culminating on January 3, 1989, in a spinoff by Integra of the stock it owned in a subsidiary, STRS became the owner of 13,649 shares of ShowBiz Pizza with an assigned value of \$156,000. (The original cost of the Integra shares which were replaced by the ShowBiz shares was \$267,000. Thus, STRS suffered a paper loss of

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approximately \$111,000.) This action, brought by the trustee for several creditors of Integra, maintains that the spinoff was a conveyance in fraud of the creditors. The payer is to reverse the transaction or to reimburse Integra for the value of the fraudulently conveyed asset together with attorneys' fees. As a result of a motion brought by a majority shareholder, the Bankruptcy Court has appointed counsel for Fidelity Capital Appreciation Fund who shall provide a defense on behalf of the class of defendant's. There is presently before the court a settlement offer which will be voted on by the class of defendants of which STRS is a member and subject to court approval.

**CalMicro Devices Litigation (1995)** STRS Counsel: Hogan & Hartson by Joseph Hassett. The federal trial court accepted the settlement proposed by the parties, which resulted in a partial recovery of damages and the savings of many millions of dollars in attorneys' fees. The former CEO of the company has been convicted of securities fraud and was ordered on December 8, 1998 to make partial restitution to the class by the conveyance of company stock valued at approximately \$3.75 million and by the assignment to the class of the \$2 million in proceeds of officers and directors insurance. This order is subject to appeal. **In addition, the CEO is subject to personal liability in the original class action. Judge Walker heard arguments on our motion for Summary Judgement against the CEO on Thursday, June 3.**

**NASDAQ Litigation (1997)** STRS Counsel: Office of the Attorney General. This is a federal class action lawsuit originally filed in 1995. The case as currently filed alleges that the NASDAQ market makers—large brokerage houses—conspired to maintain an overly wide "spread" in the transaction costs associated with the trading of shares of stocks on the NASDAQ market. The spread in the transaction costs were limited to half points rather than quarter points, a practice that resulted in higher costs. The practice has been referred to as a form of price rigging and occurred from May 1989 to May 1994.

On November 9, 1998, a class-action settlement of \$1.03 billion was approved by the Federal district court. As a member of the class, STRS will receive a portion of the proceeds from the settlement. The timing and amount of payment are dependent upon the resolution of an appeal of the settlement and certain administrative issues. **The preliminary plan of distribution is unique in that individual investors will receive a greater percentage of their losses as compared to institutional investors, because institutional investors had alternate trading**



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mechanisms to NASDAQ available to them. It is not anticipated that any funds will be distributed to class members earlier than the end of next year.

**County of Los Angeles v. STRS (1998)** STRS Counsel: STRS Legal Office, Douglas C. Wills. County of Los Angeles approached STRS through its advisor CB Richard Ellis to purchase a small tract of land (1,335 square feet) which was needed by the county to a roadway improvement project known as the Alameda Corridor project. The parties could not agree on the representations and warranties relating to environmental issues and STRS suggested the parcel be acquired through an Eminent Domain action. Parties have worked out a Stipulated Judgment in the action with payment to STRS in the amount recommended by its advisor under the purchase and sale agreement. Documents have been signed and are being recorded to close transactions.

**Note:** \* indicates new litigation cases added to Quarterly Report.